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DAVID M. BULLOCK

NASHVILLE OFFICE

May 27, 1999

Client/Matter No. 46106-0001

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Sherry L. Estes, Esquire
Office of Regional Counsel (C-14J)
Region 5
U. S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

RE: Skinner Landfill

Dear Ms. Estes:

As you may be aware, Johnston Coca-Cola Bottling Group, Inc. ("Johnston CCBG") entered into a *de minimis* settlement agreement earlier this year with the plaintiffs in the Skinner Landfill private cost recovery action in the United States District Court for the Southern District of Ohio, *The Dow Chemical Company, et al., v. Acme Wrecking Company, et al.*, Civil Action Nos. C-1-97-0307 and C-1-97-0308 (Consolidated Actions). In addition to providing for settlement of the plaintiffs' claims regarding their past costs at the Skinner Site, that agreement requires certain of the plaintiffs to seek to negotiate a *de minimis* settlement between Johnston CCBG and the United States (on behalf of the U. S. Environmental Protection Agency ("EPA")) that is at least as protective of the company's interests as are the terms of EPA's Model *De Minimis* Consent Decree set forth in the December 7, 1995, Federal Register.

It is Johnston CCBG's understanding that EPA, Region 5, has now determined what information it will require in order to determine that Johnston CCBG qualifies for a *de minimis* settlement at this Site. That information consists of: (i) the summary of each *de minimis* settlor's waste-in volume and percentage share of Site costs, as determined by the Allocator in the Final Allocation Report from the Skinner Alternative Dispute Resolution process, and (ii) the narrative description of the Allocator's findings for each *de minimis* settlor, as set forth in the Preliminary Allocation Report and, where the Allocator supplemented or altered those findings in the Final Allocation Report, the Final Allocation Report.

Sherry L. Estes, Esquire
May 27, 1999
Page 2

Accordingly, I am enclosing the information requested by EPA for Johnston CCBG. I believe that this information amply demonstrates that Johnston CCBG is entitled to a *de minimis* settlement consistent with EPA's Model *De Minimis* Consent Decree. Johnston CCBG understands that EPA and plaintiffs in the private cost recovery litigation will allocate among themselves the monies to be paid by Johnston CCBG in settlement of the claims of plaintiffs and the United States. By making this settlement offer, Johnston CCBG does not acknowledge any liability for response costs at the Skinner Site.

In order to ensure that Johnston CCBG is able to avoid the incurrence of additional transaction costs in connection with the ongoing Skinner cost recovery litigation, Johnston CCBG strongly urges EPA to finalize an appropriate *de minimis* settlement as expeditiously as possible. Such timely action would fulfill the statutory objectives of Section 122(g) of CERCLA and EPA's *de minimis* settlement policies, as well as provide needed funds for response actions at the Skinner Site.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Bullock", with a long, sweeping horizontal stroke extending to the right.

David M. Bullock

DMB/SM

cc: Karl S. Bourdeau, Esquire
Lowry F. Kline, Esquire
Brian E. Humphrey, Esquire

Final Allocation Recommendations in Alphabetical Order, Skinner Landfill Superfund Site, April 12, 1999

Name Of Party	Solid Waste In Cys	Liquid Waste In Gallons	Solid Waste In Total Cys 372908	Percentage	Liquid Waste In Total Gallons 262252	Percentage	Solid Waste	Liquid Waste	Owner/ Operator & Part of	Rest of Chem- Dyne	Total
JOHNSTON COCA-COLA BOTTLING	770	0	372908	0.2085%	262252	0.0000%	0.02%	0.00%			0.02065%

Johnston Coca-Cola Bottling Group

Settlement Amount: \$17,674.40

Excerpt from Allocator's Preliminary Report :

Coca Cola had facilities on Dana Avenue, Cincinnati [bottling operations 1934 - 1984, vending operations 1934 - 1989] and on Duck Creek Road, Cincinnati [1984 - present for bottling; vending 1989 - present]. The company also reported that it had a facility in Dayton, OH [1938 - present] for soft drink bottling and distribution.

Plant trash was transported by BFI Waste Systems, Rumpke Container Service, Inc. and Whitton Trucking. The company is not certain of the time frames for each, but a former Vice President of Operations, Jim Thomas, who worked for the company from 1968 - 1987, stated that, to the best of his recollection, Rumpke handled the company's waste for about 18 years and BFI did so for two years, from 1980 - 1982. The company had a disposal contract with Whitton as of 1991, but subsequently a contract with BFI was entered. Mr. Thomas recalled one instance in which a Coca-Cola truck was used to transport waste to a landfill -- approximately 500 - 1,000 cases of glass bottles with defective caps, containing Coca-Cola product, were transported to Rumpke's landfill and buried. A company supervisor accompanied this shipment and supervised the burial.

The company generated the following types of waste at its named facilities: glass, corrugated cardboard, miscellaneous plant and office trash, kitchen garbage, paint, ink, wooden pallets and wooden bottle cases (called "shells"). The glass went to Cincinnati Cullet. The cardboard was baled and picked up by various recyclers. The trash and garbage, as well as the pallets, went into dumpsters which were picked up by one of the waste haulers. Prior to contracting out ink waste disposal, ink waste from imprinting cases and bottle caps was disposed of in drains leading to the municipal sewer system. From time to time refrigerants were removed from equipment. The disposal method was unknown except after the enactment of regulations, such materials were taken to a Louisville company for processing and disposal. Solvents used for parts cleaning in truck maintenance was picked up by Safety Kleen, which also picked up used oil, used antifreeze, used oil filters and oil pads used to clean up spills. Old vehicle batteries were turned in to a battery distributor for disposal or reclaiming. Used tires were picked up by a tire retread company. Old and worn-out vending machines were sent to a scrap dealer.

Coca Cola stated that used oil generated from truck maintenance was picked up by Keenan Oil Company. It does not say when. As noted in the discussion above (Anchor Hocking for Keenan), Keenan deposited use oil in a pit at the Skinner Site in the early 1970s. From the questionnaire response, I cannot determine how far back in time Coca Cola used Keenan.

The company stated that in 1994 the three solid waste haulers listed above told it that none of its trash went to Skinner. The company is not aware of any of its waste going to the Site and believed that operational records for the relevant time period have been destroyed or lost during numerous changes of ownership and facility closings. Coca-Cola stated that persons interviewed have no knowledge of waste going to Skinner.

The company reports that it may have had seven other facilities within 75 miles of the Site, according to persons interviewed. These are located in: Hamilton, OH; Hillsboro, OH; Dayton, OH; Springfield, OH; Aurora, IN; Falmouth, KY; Latonia, KY; and Maysville, KY. None of these facilities, except Dayton, are currently in operation. The Dayton plant opened May 10, 1938. The company had no real estate records for any of these locations except for Dayton. These were distribution facilities and some may have been bottling plants during part of their existence.

Site Witnesses. Ray Skinner did not remember Coca Cola as a user of the Landfill.

Elsa Skinner recalled the disposal of a glass, plastic bottles, and pallets. She saw the trucks, she said. She remembered 4-5 loads in what was a one-time event. Elsa Skinner Dep., p. 306-08.

Lloyd Gregory recalled the disposal of semi-box trailers full of Coca-cola, syrup and skids. He saw a vehicle that said "Coca Cola" written on the side of it depositing this waste three or four times. He put the capacity of the vehicle at 160 cys and said he saw the vehicle there 3-4 times. Lloyd Gregory Depo., p. 93-94. David Jividen gave corroborating testimony. David Jividen Depo., p. 56. He said he saw a semi-trailer at the Site with mostly skids, but including plastic rings, plastic containers, and "some two liter" bottles "smashed up." Rodney Miller said that he saw trucks with loads he estimated were about 20 cys and contained wood containers and empty plastic bottles that said Coca Cola. He estimated that 15-20 loads reached the Site. Rodney Miller Depo., p. 96-99. These three gentlemen were referring to disposal in the late 1980s. William Blevins in the 1960s said Coca Cola hauled skids to the Site "all the time." W. Blevins Depo., p. 51.

Waste-in Amount. The district court will not ignore this testimony especially given that Coca Cola has advised me that it has been difficult investigating this Site because this particular Coca Cola entity was formed from a number of prior entities whose records have been destroyed or lost through numerous plant closings.

Using Lloyd Gregory's testimony, I have assigned Coca Cola 280 cys (3.5 visits x 80 cys). (I used 80 cys in this instance because I do think that under this circumstance only it is unreasonable to assume that a box trailer with a 160 cy capacity contained 160 cys of waste for disposal). Using Elsa Skinner's testimony, I am assuming a 20 cy load and assigning Coca Cola 90 cys (4.5 loads x 20 cys). Using Rodney Miller's testimony, I am adding 350 cys (17.5 loads x 20 cys per load). I am defaulting to a 50 cy figure (I assumed five loads at 10 cys per load in the 1960s) to account for the Blevins testimony in the absence of any better way to quantify it.

The final waste-in amount for Coca Cola is 770 cys.